

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-15-FL**

ROBERT TERRACINO and
BRADIE TERRACINO,

Plaintiffs,

v.

TRIMACO, INC.,

Defendant.

**RESPONSE TO DEFENDANT’S STATEMENT OF MATERIAL FACTS IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

COME NOW Plaintiffs, Robert and Bradie Terracino, and for their Statement of Material Facts in Opposition to Plaintiff’s Motion for Summary Judgment state as follows.

1. Plaintiffs admit Defendant’s Statement 1, but deny that it is a statement of material fact to be considered by the Court in deciding Defendant’s Motion for Summary Judgment.
2. Plaintiffs admit Defendant’s Statement 2, but deny that it is a statement of material fact to be considered by the Court in deciding Defendant’s Motion for Summary Judgment.
3. Plaintiffs admit Defendant’s Statement 3, but deny that it is a statement of material fact to be considered by the Court in deciding Defendant’s Motion for Summary Judgment.
4. Plaintiffs admit Defendant’s Statement 4, but deny that it is a statement of material fact to be considered by the Court in deciding Defendant’s Motion for Summary Judgment.
5. Plaintiffs admit Defendant’s Statement 5.
6. Plaintiffs admit Defendant’s Statement 6.
7. Plaintiffs admit Defendant’s Statement 7.

8. Plaintiffs admit Defendant's Statement 8.
9. Plaintiffs admit Defendant's Statement 9.
10. Plaintiffs admit Defendant's Statement 10.
11. Plaintiffs admit Defendant's Statement 11.
12. Plaintiffs admit Defendant's Statement 12.
13. Plaintiffs deny Defendant's Statement 13.
14. Plaintiffs deny Defendant's Statement 14.
15. Plaintiffs deny Defendant's Statement 15.
16. Plaintiffs deny Defendant's Statement 16.
17. Plaintiffs deny Defendant's Statement 17.
18. Plaintiffs deny Defendant's Statement 18.
19. Plaintiffs admit Defendant's Statement 19, but deny that it is a statement of material fact to be considered by the Court in deciding Defendant's Motion for Summary Judgment.
20. Plaintiffs deny Defendant's Statement 20.
21. Plaintiffs deny Defendant's Statement 21.
22. Plaintiffs deny Defendant's Statement 22, and further deny that Tanner's Opinion is an "Opinion of Counsel" in that Plaintiffs retained Tanner as an expert and have never retained Tanner as counsel.
23. Plaintiffs deny Defendant's Statement 23.
24. Plaintiffs deny Defendant's Statement 24 and further state that a statement by counsel to Plaintiffs' expert is inadmissible for the purposes of both trial and Defendant's Motion especially where, as here, Defendant has not deposed Plaintiffs' expert nor determined by any means that Tanner relied upon counsel's statement.

25. Plaintiffs deny Defendant's Statement 24 and further state that a statement by counsel to Plaintiffs' expert is inadmissible for the purposes of both trial and Defendant's Motion especially where, as here, Defendant has not deposed Plaintiffs' expert nor determined by any means that Tanner relied upon counsel's statement.
26. Plaintiffs admit that Plaintiffs' Expert Opinion speaks for itself but deny that the allegations of Paragraph 26 are admissible for the purposes of Plaintiff's Motion.
27. Plaintiffs admit that it has not as of yet provided an amended expert opinion, but further state that Defendant has not sought one nor has Defendant deposed Plaintiffs' expert.
28. Plaintiffs deny that Plaintiffs' expert was not properly disclosed as an expert witness and further state that whether or not Tanner was identified as an expert witness at the time of the filing of Plaintiffs' Complaint is irrelevant and inadmissible for the purposes of Defendant's Motion. Plaintiffs further state that if, as Defendant asserts, Tanner provided an opinion of counsel and not an expert witness opinion, then any portion of Tanner's opinion is inadmissible at trial and for the purposes of Defendant's Motion.

Respectfully submitted, this 30th day of October, 2024.

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Local Civil Rule 83.1(d) Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2024 I electronically filed the foregoing Opposition to Defendant's Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Duncan G. Byers

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